

Ryan Thompson (#296841)
WATTS GUERRA LLP
525 South Douglas Street, Suite 260
El Segundo, California 90245
Telephone: (424) 220-8141
Facsimile: (424) 732-8190
rthompson@wattsguerra.com

Attorneys for Plaintiffs
Additional Counsel on Signature Page

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PATRICK SCARRY, individually and)
on behalf of similarly situated)
persons,)

Plaintiff,)

v.)

SUMMIT RESTAURANT GROUP,)
LLC, SUMMIT PIZZA, INC.,)
SUMMIT RESTAURANTS, LLC,)
SUMMIT INTERESTS, LLC,)
SUMMIT FARE, LLC, ARKANSAS)
PIZZA, INC. and SUMMIT PIZZA)
WEST, LLC)

Defendants.)

Case No.: '15CV1090 WQHBGS

**CLASS AND COLLECTIVE
ACTION COMPLAINT**

JURY TRIAL DEMANDED

Plaintiff Patrick Scarry, individually and on behalf of all other similarly situated delivery drivers, for his Complaint against Defendants, alleges as follows:

1. Defendants operate approximately 117 Pizza Hut franchise stores in California, Arkansas, Missouri and Oklahoma. Defendants employ delivery

1 drivers who use their own automobiles to deliver pizza and other food items
2 to Defendants' customers. Instead of reimbursing their delivery drivers for the
3 reasonably approximate costs of the business use of their vehicles, Defendants
4 use a flawed method to determine reimbursement rates that provides such an
5 unreasonably low rate beneath any reasonable approximation of the expenses
6 they incur that the drivers' unreimbursed expenses cause their wages to fall
7 below the federal and California minimum wages during some or all
8 workweeks.

9 2. Plaintiff Patrick Scarry brings this lawsuit as a collective action under the
10 Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 et seq., and as a class
11 action under California law to remedy wage and hour violations by
12 Defendants, who engaged in a pervasive and unlawful scheme to deprive
13 their employees of the protections granted them under federal and California
14 wage and hour law.

15 **Jurisdiction and Venue**

16 3. The FLSA authorizes court actions by private parties to recover damages
17 for violation of their wage and hour provisions. Jurisdiction over Plaintiff's
18 claims is based on 29 U.S.C. § 216(b), 28 U.S.C. § 1331 (federal question) and
19 28 U.S.C. § 1367 (pendent claims).

20 4. Venue in this District is proper under 28 U.S.C. § 1391 because
21 Defendants operate Pizza Hut franchise stores in this District, Defendants
22 employ Plaintiff in this District, and a substantial part of the events giving rise
23 to the claim herein occurred in this District.

24 **Parties**

25 5. Defendants Summit Restaurant Group, LLC, Summit Restaurants, LLC,
26 Summit Interests, LLC and Summit Fare, LLC are Missouri limited liability
27 companies which, together with the other Defendants, operate a chain of
28

1 Pizza Hut stores, including stores located within the Southern District of
2 California.

3 6. Defendant Summit Pizza, Inc. is a Missouri corporation which, together
4 with the other Defendants, operates a chain of Pizza Hut stores, including
5 Pizza Hut stores located within the Southern District of California.

6 7. Defendant Arkansas Pizza, Inc. is an Arkansas corporation which,
7 together with the other Defendants, operates a chain of Pizza Hut stores,
8 including stores located within the Southern District of California.

9 8. Defendant Summit Pizza West, LLC is a California limited liability
10 company which, together with the other Defendants, operates a chain of Pizza
11 Hut stores, including stores located within the Southern District of California.

12 9. Defendants are liable for each other's acts and omissions because they
13 constitute a single employer or single integrated enterprise as they share
14 common ownership, common management, centralized control of labor
15 relations, and interrelation of operations.

16 10. Alternatively, Defendants are liable for each other's acts and omissions
17 because they constitute joint employers as they share power to hire and fire
18 employees, share supervision and control of employee work schedules or
19 conditions of employment, jointly determine the rate and method of payment,
20 and jointly maintain employment records.

21 11. Alternatively, because the work performed by Plaintiff and all other
22 delivery drivers simultaneously benefited all Defendants and directly or
23 indirectly furthered their joint interests, Defendants are collectively the joint
24 employers of Plaintiff and other similarly situated employees under the
25 FLSA's broad definition of "employer."

26 12. Plaintiff Patrick Scarry has been employed by Defendants since
27 approximately September 2007 as a delivery driver at their Pizza Hut store in
28 San Diego, California, which is located within the Southern District of

1 California. Plaintiff Scarry's Consent to Become a Party Plaintiff under 29
2 U.S.C. § 216(b) is attached hereto as Exhibit 1.

3 **General Allegations**

4 *Defendants' Business*

5 13. Defendants own and operate approximately 117 Pizza Hut franchise
6 stores in California, Arkansas, Missouri and Oklahoma.

7 14. Defendants' Pizza Hut stores employ delivery drivers who all have the
8 same primary job duty: to deliver pizzas and other food items to customers'
9 homes or workplaces.

10 *Defendants' Flawed Reimbursement Policy*

11 15. Defendants require their delivery drivers to maintain and pay for safe,
12 legally-operable, and insured automobiles when delivering pizza and other
13 food items.

14 16. Defendants' delivery drivers incur costs for gasoline, vehicle parts and
15 fluids, repair and maintenance services, insurance, depreciation, and other
16 expenses (collectively "automobile expenses") while delivering pizzas for the
17 primary benefit of Defendants.

18 17. Defendants' reimbursement policy reimburses drivers on a per-delivery
19 basis, but given the average delivery distance the per-delivery reimbursement
20 equates to a per mile rate far below the IRS business mileage reimbursement
21 rate or any other reasonable approximation of the cost to own and operate a
22 motor vehicle. This policy applies to all of Defendants' delivery drivers.

23 18. The result of Defendants' delivery driver reimbursement policy is a
24 reimbursement of much less than a reasonable approximation of their drivers'
25 automobile expenses.

26 19. During the applicable California limitations period, the IRS business
27 mileage reimbursement rate has ranged between \$.51 and \$.575 per mile.
28 Likewise, reputable companies that study the cost of owning and operating a

1 motor vehicle and/or reasonable reimbursement rates, including the AAA,
2 have determined that the average cost of owning and operating a sedan
3 vehicle ranged between \$.585 and \$.608 per mile between 2011 and 2014 for
4 drivers who drive a sedan about 15,000 miles per year. These figures represent
5 a reasonable approximation of the average cost of owning and operating a
6 vehicle for use in delivering pizzas.

7 20. The Division of Labor Standards Enforcement ("DLSE"), the state
8 agency authorized to enforce California's labor laws, accepts the IRS business
9 mileage reimbursement rate as the reasonable per-mile cost of driving a
10 vehicle. *See* DLSE Opinion Letter No. 1994.09.14, p. 1 ("[T]he DLSE has long
11 recognized the IRS rate for automobile reimbursement as a presumptively
12 reasonable rate.").

13 21. The driving conditions associated with the pizza delivery business
14 cause more frequent maintenance costs, higher costs due to repairs associated
15 with driving, and more rapid depreciation from driving as much as, and in
16 the manner of, a delivery driver. Defendants' delivery drivers further
17 experience lower gas mileage and higher repair costs than the average driver
18 used to determine the average cost of owning and operating a vehicle
19 described above due to the nature of the delivery business, including frequent
20 starting and stopping of the engine, frequent braking, short routes as opposed
21 to highway driving, and driving under time pressures.

22 22. Defendants' reimbursement policy does not reimburse delivery drivers
23 for even their ongoing out-of-pocket expenses, much less other costs they
24 incur to own and operate their vehicle, and thus Defendants uniformly fail to
25 reimburse their delivery drivers at any reasonable approximation of the cost
26 of owning and operating their vehicles for Defendants' benefit.

27 23. Defendants' systematic failure to adequately reimburse automobile
28 expenses constitutes a "kickback" to Defendants such that the hourly wages

1 they pay to Plaintiff and their other delivery drivers are not paid free and
2 clear of all outstanding obligations to Defendants.

3 24. Defendants fails to reasonably approximate the amount of their drivers'
4 automobile expenses to such an extent that their drivers' net wages are
5 diminished beneath the federal and state minimum wage requirements.

6 25. In sum, Defendants' reimbursement policy and methodology fail to
7 reflect the realities of delivery drivers' automobile expenses.

8 ***Defendants' Failure to Reasonably Reimburse Automobile Expenses Causes***
9 ***Minimum Wage Violations***

10 26. Regardless of the precise amount of the per-delivery reimbursement at
11 any given point in time, Defendants' reimbursement formula has resulted in
12 an unreasonable underestimation of delivery drivers' automobile expenses
13 throughout the recovery period, causing systematic violations of the federal
14 and state minimum wage.

15 27. Plaintiff has been paid exactly the California minimum wage per hour
16 during his employment with Defendants.

17 28. The federal minimum wage has been \$7.25 per hour since July 24, 2009;
18 further, the California minimum wage was \$8.00 per hour from the beginning
19 of the class period until June 30, 2014. It increased to \$9.00 per hour effective
20 July 1, 2014. Plaintiff has driven a 1996 Isuzu Rodeo and a 2002 Chevrolet
21 Tracker while delivering pizzas for Defendants.

22 29. During Plaintiff's employment by Defendants, the per mile
23 reimbursement rate at the store where Plaintiff worked has been
24 approximately \$1.10 per delivery.

25 30. During his employment with Defendants, Plaintiff has experienced an
26 average delivery distance of approximately 4 miles per delivery.

1 31. Thus, during his employment, Defendants' average effective
2 reimbursement rate for Plaintiff has been approximately \$0.275 (\$1.10 per
3 delivery / 4 miles per delivery).

4 32. Currently, the IRS business mileage reimbursement rate is \$.575 per
5 mile, which reasonably approximates the automobile expenses incurred
6 delivering pizzas. Using the IRS rate as a reasonable approximation of
7 Plaintiff's automobile expenses, every mile driven on the job decreased his net
8 wages by approximately \$.30 (\$.575 - \$.275) per mile. Considering Plaintiff's
9 estimate of about 4 miles per delivery, Defendants have under-reimbursed
10 him about \$1.20 per delivery (\$.30 x 4 miles).

11 33. Defendants have not asked Plaintiff to track his actual automobile
12 expenses, nor is he an expert in the field of calculating the cost of automobile
13 usage. However, Plaintiff's actual automobile expenses are at the very least
14 \$.48 per mile based on the true cost of owning a car calculated by
15 Edmunds.com for comparable vehicles and based on driving 15,000.00 per
16 year. Using even this conservative under-estimate of Plaintiff's actual
17 expenses, as opposed to the applicable IRS rate, every mile driven on the job
18 decreases his net wages by about \$.205 (\$.48 - \$.275), or about \$.82 (\$.205 x 4
19 miles) per delivery.

20 34. During his employment by Defendants, Plaintiff has typically averaged
21 approximately 2½ deliveries per hour.

22 35. Thus, depending on whether Defendants' reimbursement rate is
23 compared to the IRS rate or to a conservative under-estimate of Plaintiff's
24 actual expenses, Plaintiff has consistently "kicked back" to Defendants
25 between approximately \$2.05 per hour (\$.82 per delivery x 2.5 deliveries per
26 hour) and \$3.00 (\$1.20 per delivery x 2.5 deliveries per hour), for an effective
27 hourly wage rate since July 2014 of about \$6.00 (\$9.00 per hour - \$3.00
28 kickback) to about \$6.95 (\$9.00 per hour - \$2.05 kickback).

1 36. Plaintiff's net hourly rate was even lower prior to July 2014 due to his
2 then-lesser wage rate.

3 37. All of Defendants' delivery drivers have similar experiences to those of
4 Plaintiff. They are subject to the same reimbursement policy; receive similar
5 reimbursements; incur similar automobile expenses; complete deliveries of
6 similar distances and at similar frequencies; and are paid at or near the federal
7 or state minimum wage before deducting unreimbursed business expenses.

8 38. Because Defendants pay their drivers a gross hourly wage at precisely,
9 or at least very close to, the federal and state minimum wage, and because the
10 delivery drivers incur unreimbursed automobile expenses, the delivery
11 drivers "kick back" to Defendants an amount sufficient to cause minimum
12 wage violations.

13 39. While the amount of Defendants' actual reimbursements per mile may
14 vary over time, Defendants are relying on the same flawed policy and
15 methodology with respect to all delivery drivers at all of their other Pizza Hut
16 stores. Thus, although reimbursement amounts may differ somewhat by time
17 or region, the amounts of under-reimbursements relative to automobile costs
18 incurred are relatively consistent between time and region.

19 40. Defendants' low reimbursement rates have been a frequent complaint
20 of at least some of Defendants' delivery drivers, including Plaintiff, yet
21 Defendants have continued to reimburse at a rate much less than any
22 reasonable approximation of delivery drivers' automobile expenses.

23 41. The net effect of Defendants' flawed reimbursement policy is that they
24 willfully fail to pay the federal and state minimum wage to their delivery
25 drivers. Defendants thereby enjoy ill-gained profits at the expense of their
26 employees.

Class and Collective Action Allegations

42. Plaintiff brings the FLSA claim as an “opt-in” collective action on behalf of similarly situated delivery drivers, who may opt-in to this case under 29 U.S.C. § 216(b).

43. Plaintiff, individually and on behalf of other similarly situated drivers, seeks relief on a collective basis challenging Defendants’ practice of failing to pay employees federal and state minimum wage. The number and identity of other plaintiffs yet to opt-in may be ascertained from Defendants’ records, and potential class members may be notified of the pendency of this action via mail.

44. Plaintiff and all of Defendants’ delivery drivers are similarly situated in that:

- a. They have worked as delivery drivers for Defendants delivering pizza and other food items to Defendants’ customers;
- b. They have delivered pizza and food items using automobiles not owned or maintained by Defendants;
- c. Defendants required them to maintain these automobiles in a safe, legally-operable, and insured condition;
- d. They incurred costs for automobile expenses while delivering pizzas and food items for the primary benefit of Defendants;
- e. They were subject to similar driving conditions, automobile expenses, delivery distances, and delivery frequencies;
- f. They were subject to the same pay policies and practices of Defendants;
- g. They were subject to the same delivery driver reimbursement policy that unreasonably underestimates automobile expenses per mile, and thereby systematically deprived of reasonably

1 approximate reimbursements, resulting in wages below the
2 federal and state minimum wage in some or all workweeks;

3 h. They were reimbursed similar set amounts of automobile
4 expenses per delivery; and

5 i. They were paid at or near the federal or state minimum wage
6 before deducting unreimbursed business expenses.

7 45. Plaintiff brings Count II through IV as a class action under Fed. R. Civ.
8 P. 23, on behalf of himself and as the Class Representatives of the following
9 persons (the "Class"):

10 All current and former delivery drivers employed by Defendants in the
11 State of California since the date four years preceding the filing of this
12 Complaint.

13 46. The state law claims, if certified for class-wide treatment, are brought
14 on behalf of all similarly situated persons who do not opt-out of the Class.

15 47. Plaintiff's state law claims satisfy the numerosity, commonality,
16 typicality, adequacy, predominance and superiority requirements of a class
17 action under Fed. R. Civ. P. 23.

18 48. The Class satisfies the numerosity standard as it consists of at least
19 hundreds of persons who are geographically dispersed and, therefore, joinder
20 of all Class members in a single action is impracticable.

21 49. Questions of fact and law common to the Class predominate over any
22 questions affecting only individual members. The questions of law and fact
23 common to the Class arising from Defendants' actions include, without
24 limitation:

25 a. Whether Defendants failed to adequately reimburse Class
26 members for using their own vehicles to deliver Defendants'
27 pizzas and other food items,
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- b. Whether Defendants failed to pay Class members the minimum wage required by California law, and
- c. Whether Defendants' formula and/or methodology used to calculate the payment of reimbursement for vehicle expenses resulted in under-reimbursement of the Class members.

50. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the state law claims.

51. Plaintiff's claims are typical of those of the Class in that:

- a. Plaintiff and the Class have worked as delivery drivers for Defendants delivering pizza and other food items to Defendants' customers;
- b. Plaintiff and the Class delivered pizza and food items using automobiles not owned or maintained by Defendants;
- c. Defendants required Plaintiff and the Class to maintain these automobiles in a safe, legally-operable, and insured condition;
- d. Plaintiff and the Class incurred costs for automobile expenses while delivering pizzas and food items for the primary benefit of Defendants;
- e. Plaintiff and the Class were subject to similar driving conditions, automobile expenses, delivery distances, and delivery frequencies;
- f. Plaintiff and the Class were subject to the same pay policies and practices of Defendants;
- g. Plaintiff and the Class were subject to the same delivery driver reimbursement policy that underestimates automobile expenses per mile, and thereby systematically deprived of reasonably

1 approximate reimbursements, resulting in wages below the state
2 minimum wage in some or all workweeks;

3 h. Plaintiff and the Class were reimbursed similar set amounts of
4 automobile expenses per mile; and

5 i. Plaintiff and the Class were paid at or near the California
6 minimum wage before deducting unreimbursed business
7 expenses.

8 52. A class action is the appropriate method for the fair and efficient
9 adjudication of this controversy. Defendants have acted or refused to act on
10 grounds generally applicable to the Class.

11 53. Plaintiff is an adequate representative of the Class because he is a
12 member of the Class and his interests do not conflict with the interest of the
13 members of the Class he seeks to represent. The interests of the members of
14 the Class will be fairly and adequately protected by Plaintiff and the
15 undersigned counsel, who have extensive experience prosecuting complex
16 wage and hour, employment, and class action litigation.

17 54. Maintenance of this action as a class action is superior to other available
18 methods for fairly and efficiently adjudicating the controversy as members of
19 the Class have little interest in individually controlling the prosecution of
20 separate class actions, no other litigation is pending over the same
21 controversy, it is desirable to concentrate the litigation in this Court due to the
22 relatively small recoveries per member of the Class, and there are no material
23 difficulties impairing the management of a class action.

24 55. It would be impracticable and undesirable for each member of the Class
25 who suffered harm to bring a separate action. In addition, the maintenance of
26 separate actions would place a substantial and unnecessary burden on the
27 courts and could result in inconsistent adjudications, while a single class
28 action can determine, with judicial economy, the rights of all Class members.

Count I: Violation of the Fair Labor Standards Act of 1938

56. Plaintiff reasserts and re-alleges the allegations set forth above.

57. Defendants are subject to the FLSA's minimum wage requirements because they are an enterprise engaged in interstate commerce, and their employees are engaged in commerce.

58. At all relevant times herein, Plaintiff and all other similarly situated delivery drivers have been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. §§ 201, et seq.

59. Section 13 of the FLSA, codified at 29 U.S.C. § 213, exempts certain categories of employees from federal minimum wage obligations. None of the FLSA exemptions apply to Plaintiff or other similarly situated delivery drivers.

60. The FLSA regulates, among other things, the payment of minimum wage by employers whose employees are engaged in interstate commerce, or engaged in the production of goods for commerce, or employed in an enterprise engaged in commerce or in the production of goods for commerce. 29 U.S.C. §206(a).

61. Under Section 6 of the FLSA, codified at 29 U.S.C. § 206, employees have been entitled to be compensated at a rate of at least \$7.25 per hour since July 24, 2009.

62. As alleged herein, Defendants have reimbursed delivery drivers less than the reasonably approximate amount of their automobile expenses to such an extent that it diminishes these employees' wages beneath the federal minimum wage.

63. Defendants knew or should have known that their pay and reimbursement policies, practices and methodology result in failure to compensate delivery drivers at the federal minimum wage.

1 64. Defendants, pursuant to their policy and practice, violated the FLSA by
2 refusing and failing to pay federal minimum wage to Plaintiffs and other
3 similarly situated employees.

4 65. Plaintiff and all similarly situated delivery drivers are victims of a
5 uniform and employer-based compensation and reimbursement policy. This
6 uniform policy, in violation of the FLSA, has been applied, and continues to
7 be applied, to all delivery driver employees in Defendants' stores.

8 66. Plaintiff and all similarly situated employees are entitled to damages
9 equal to the minimum wage minus actual wages received after deducting
10 reasonably approximated automobile expenses within three years from the
11 date each Plaintiffs join this case, plus periods of equitable tolling, because
12 Defendants acted willfully and knew, or showed reckless disregard for,
13 whether their conduct was unlawful.

14 67. Defendants have acted neither in good faith nor with reasonable
15 grounds to believe that their actions and omissions were not a violation of the
16 FLSA, and as a result, Plaintiff and other similarly situated employees are
17 entitled to recover an award of liquidated damages in an amount equal to the
18 amount of unpaid minimum wages under 29 U.S.C. § 216(b). Alternatively,
19 should the Court find Defendants are not liable for liquidated damages,
20 Plaintiff and all similarly situated employees are entitled to an award of
21 prejudgment interest at the applicable legal rate.

22 68. As a result of the aforesaid willful violations of the FLSA's minimum
23 wage provisions, minimum wage compensation has been unlawfully
24 withheld by Defendants from Plaintiff and all similarly situated employees.
25 Accordingly, Defendants are liable under 29 U.S.C. § 216(b), together with an
26 additional amount as liquidated damages, pre-judgment and post-judgment
27 interest, reasonable attorneys' fees, and costs of this action.

1 WHEREFORE, Plaintiff and all similarly situated delivery drivers demand
 2 judgment against Defendants and request: (1) compensatory damages; (2)
 3 liquidated damages; (3) attorneys' fees and costs as allowed by Section 16(b)
 4 of the FLSA; (4) pre-judgment and post-judgment interest as provided by law;
 5 and (5) such other relief as the Court deems fair and equitable.

6 **Count II: Violation of California Labor Code § 2802**

7 69. Plaintiff reasserts and re-alleges the allegations set forth above.

8 70. Labor Code § 2802(a) provides: "An employer shall indemnify his or
 9 her employee for all necessary expenditures or losses incurred by the
 10 employee in direct consequence of the discharge of his or her duties...."

11 71. At all relevant times herein, Defendants, by virtue of their mileage
 12 reimbursement policies and practices, failed to indemnify Plaintiff and the
 13 Class appropriately for all necessary automobile expenses that Plaintiff and
 14 the Class incurred while performing work for Defendants.

15 72. Plaintiff and the Class incurred substantial out-of-pocket losses because
 16 of Defendants' failure to reimburse Plaintiff and the Class appropriately for all
 17 necessary automobile expenses that Plaintiff and the Class incurred while
 18 performing work for Defendants. To date, Defendants have failed to
 19 indemnify Plaintiff and the Class for these out-of-pocket losses.

20 73. Under Labor Code § 2802(c), Plaintiff and the Class are entitled to
 21 recover all reasonable costs, including attorneys' fees, incurred in enforcing
 22 their rights granted by Labor Code § 2802.

23 WHEREFORE, Plaintiff and the Class demand judgment against
 24 Defendants and request: (1) indemnification to Plaintiff and the Class for
 25 necessary expenditures or losses they incurred in the direct consequence of
 26 the discharge of their duties for Defendants; (2) attorneys' fees and costs as
 27 allowed by Section 2802(c) of the Labor Code; (3) pre-judgment and post-
 28

1 judgment interest as provided by law; and (4) such other relief as the Court
2 deems fair and equitable.

3 **Count III: Violation of California Labor Code §§ 1194, 1194.2, 1197, 1197.1,**
4 **and IWC Minimum Wage Order and Wage Order No. 5**

5 74. Plaintiff reasserts and re-alleges the allegations set forth above.

6 75. Pursuant to Labor Code §§ 1194, 1194.2, 1197, and 1197.1, it is unlawful
7 for an employer to suffer or permit a California employee to work without
8 paying wages at the proper minimum wage for all time worked, as required
9 by the applicable IWC Minimum Wage Order and Wage Order No. 5.

10 76. At all relevant times herein, Plaintiff and the Class nominally
11 performed work for at or near the California minimum wage.

12 77. At all relevant times herein, Defendants continually failed to reimburse
13 Plaintiff and the Class for all necessary, automobile expenses that Plaintiff and
14 the Class incurred while performing work for Defendants, causing the total
15 hourly compensation paid to Plaintiff and the Class continually to fall below
16 the state minimum wage.

17 78. At all relevant times herein, under the provisions of the IWC Wage
18 Orders, Plaintiff and the Class should have received not less than the
19 minimum wage in a sum according to proof for the time worked but not
20 compensated.

21 79. For all time that Plaintiff and the Class worked and received less than
22 the state minimum wage, they are entitled to no less than the state minimum
23 wage, and pursuant to Labor Code § 1194.2(a), liquidated damages in an
24 amount equal to the unpaid minimum wage and interest thereon. Pursuant to
25 Labor Code § 1194, Plaintiff and the Class are also entitled to their attorneys'
26 fees, costs, and interest according to proof.

27 WHEREFORE, Plaintiff and the Class demand judgment against
28 Defendants and request: (1) payment of minimum wage in an amount

1 according to proof; (2) liquidated damages; (3) attorneys' fees and costs as
2 allowed by Section 1194.2(a) of the Labor Code; (4) pre-judgment and post-
3 judgment interest as provided by law; and (5) such other relief as the Court
4 deems fair and equitable.

5 **Count IV: Violation of California Business & Professions Code § 17200, et**
6 **seq.**

7 80. Plaintiff reasserts and re-alleges the allegations set forth above.

8 81. Defendants' violations of the Employment Laws and Regulations as
9 alleged herein, including Defendants' failure and refusal to indemnify
10 Plaintiff and the Class appropriately for necessary automobile expenses they
11 incurred and Defendants' failure to pay minimum wages to Plaintiff and the
12 Class constitute unfair business practices in violation of California Business &
13 Professions Code § 17200, et seq.

14 82. As a result of Defendants' unfair business practices, Defendants have
15 reaped unfair benefits and illegal profits at the expense of Plaintiff, the Class,
16 and the public. Defendants should be made to disgorge their ill-gotten gains
17 and restore such monies to Plaintiff and the Class.

18 83. Defendants' unfair business practices entitle Plaintiff to seek
19 preliminary and permanent injunctive relief, including but not limited to
20 orders that Defendants account for, disgorge and restore to Plaintiff and the
21 Class the compensation and reimbursement unlawfully withheld from them.

22 WHEREFORE, Plaintiff and the Class demand judgment against
23 Defendants and request: (1) disgorgement of profits garnered as a result of
24 Defendants' unlawful failure to indemnify necessary, automobile expenses
25 and pay minimum wages and other compensation earned; (2) restitution
26 under Business & Professions Code § 17200, et seq.; (3) permanent injunctive
27 and declaratory relief under Business & Professions Code § 17200, et seq.; (4)
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1 pre-judgment and post-judgment interest as provided by law; and (5) such
2 other relief as the Court deems fair and equitable.

3 **Demand for Jury Trial**

4 Plaintiff hereby requests a trial by jury of all issues triable by jury.
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2 DATED: May 14, 2015

Respectfully submitted,

3 **PAUL McINNES LLP**

WATTS GUERRA LLP

4 Richard M. Paul III

5 Jack D. McInnes

/s/ Ryan Thompson

6 (pro hac vice application forthcoming)

Ryan Thompson

601 Walnut, Suite 300

525 South Douglas St., Suite 260

7 Kansas City, Missouri 64106

El Segundo, California 90245

Telephone: (816) 981-8100

Telephone: (424) 220-8141

8 Facsimile: (816) 981-8101

Facsimile: (424) 732-8190

9 paul@paulmcinnes.com

rthompson@wattsguerra.com

10 **WEINHAUS & POTASHNICK**

11 Mark A. Potashnick

(pro hac application forthcoming)

12 11500 Olive Blvd., Suite 133

13 St. Louis, Missouri 63141

Telephone: (314) 997-9150

14 Facsimile: (314) 997-9170

15 markp@wp-attorneys.com

16 **ATTORNEYS FOR PLAINTIFF**